IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 153 of 2000

Date of decision 26.7.2007

State of H.P. **…Appellant.**

Versus

Prem Chand **…Respondent.**

Coram

The Hon'ble Mr. Justice : Surjit Singh, Judge.

Whether approved for reporting?

For the appellant : Mr. A. Burathoki, Addl. A.G.

For the respondent : Mr. R.K. Bawa, Sr. Advocate, with Mr. Inderjit Singh, Advocate.

Surjit Singh, Judge (Oral)

This appeal by the State is directed against the judgment of the trial Magistrate, whereby the respondent, who was sent up for trial for an offence punishable under Section 408 of the Indian Penal Code, has been acquitted with the reasoning that there had been delay in lodging the FIR and also the audit was conducted by an Officer, who had not been specifically authorized to do so under the provision of Section 61 of the H.P. Cooperative Societies Act, 1968.

Whether reporters of Local Papers may be allowed to see the Judgment?

2. The respondent was employed as Secretary-cum-Salesman with Laxmi Narayan Co-operative Consumer Store Ltd. Kinnu. He left the job in June 1985. As per entries in the cash book, written and maintained by the respondent and also kept by him in his own custody, he was supposed to be having cash of Rs.34,159.02 at the time when he left the job. However, he allegedly did not account for that money and misappropriated the same. Also, it was alleged that he had purchased goods worth Rs.12286.39 for being sold at the cooperative store, in question, against the cash credit limit granted in favour of the store by a Cooperative Bank, but did not account for the goods or the sale proceeds thereof.

3. The trial Court charged the respondent with an offence punishable under Section 408 of the Indian Penal Code. At the end of the trial, order of acquittal was passed, after giving the summary of the testimony of the witnesses. Reasons for acquittal are recorded in para 22 of the judgment, which is reproduced below:-

> "22. Keeping in view the delay in lodging FIR and conducting of audit without compliance of provisions of section 61 of the H.P. Co-operative Society Act, 1968, the case of prosecution becomes suspicious and un-reliable. Therefore point No. 1 is decided against the prosecution."

4. The trial Court has not appreciated the evidence, but has only referred to the substance of the statements made by the witnesses and passed the impugned order. It has not taken into account the documentary evidence led by the prosecution in the form of a large number of entries in the cash book and other record. It has also not held whether the entries in

the record are in the hand of the respondent, as alleged by the prosecution, and if so, whether they prove the allegation of the prosecution or not. As noticed above, only two reasons have been recorded in support of the judgment of acquittal. Neither of the two reasons by itself is valid for passing the judgment of acquittal. Delay in lodging the FIR by itself cannot be a ground for acquittal. It may be one of the several reasons for suspecting the correctness of the prosecution version, but only in those cases which are based on oral evidence and not where the prosecution's allegations are sought to be established by reference to the entries in the books of accounts or other record, allegedly maintained by the accused himself.

5. The second reasons is in fact no reason in the eyes of law for acquitting the respondent. The mere fact that the audit was conducted by some officer not duly authorized, cannot be said to have prejudiced the respondent in any way. Secondly, the judgment of the trial Court does not say that the respondent had pleaded that he was prejudiced by the audit having been conducted by some unauthorized man and if so in what way or manner. Thirdly the trial Court was to have recorded its own findings, based on the evidence led before it, during the trial, by the prosecution and not on the basis of the findings and the report of the Auditor.

6. In view of the above stated position, the judgment under appeal is held to be no judgment in the eyes of law as the evidence on record has not been examined and appraised and the order of acquittal has been passed on superfluous grounds.

7. Consequently the appeal is accepted, the impugned judgment is set aside and the case is remanded to the trial Magistrate with the

direction to decide it afresh in accordance with law, after hearing both the sides.

8. The case being very old, the trial Magistrate is directed to dispose it of within two months of the receipt of the record. Registry is directed to remit the record, along-with a copy of this order, to the trial Magistrate immediately.

July 26, 2007 (BC) **(Surjit Singh)**
Judge